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No. 851

In the Supreme Court of the United States

OCTOBER TERM, 1929

F. W. STEWART MANUFACTURING CORPORATION
PETITIONER
v.
THE UNITED STATES

ON PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF CLAIMS

BRIEF FOR THE UNITED STATES IN OPPOSITION

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In the Supreme Court of the United States

OCTOBER TERM, 1929

No. 351

F. W. STEWART MANUFACTURING CORPORATION, petitioner

v.

THE UNITED STATES

ON PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF CLAIMS

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINION BELOW

The memorandum opinion of the Court of Claims (R. 12) is not yet reported.

JURISDICTION

The judgment sought to be reviewed was entered March 11, 1929. (R. 13.) Motion for a new trial was overruled June 3, 1929. (R. 13, 14.) Petition for a writ of certiorari was filed August 29, 1929. (R. 14.) The jurisdiction of this Court is invoked under Section 3 (b) of the Act of February 13, 1925.

QUESTION PRESENTED

Whether speedometer gears, drive chains or flexible shafts, and flexible housings for such chains or shafts, which the Court of Claims found were especially designed, manufactured, and sold for use on or in connection with automobiles and were not adapted to any other purpose or use, were taxable as automobile "parts" or "accessories" within the meaning of Section 900 (3) of the Revenue Act of 1921 and Section 600 (3) of the Revenue Act of 1924.

STATUTES AND REGULATIONS INVOLVED

The applicable statutes and regulations of the Commissioner of Internal Revenue are quoted on pages 2–6 of the Government's brief in opposition in *Bassick Manufacturing Company* v. *United States*, No. 350, which will be submitted at the same time as the present case.

STATEMENT

Petitioner brought suit in the Court of Claims to recover excise taxes in the sum of $4,624.89, plus interest, assessed against it during the period between October 1, 1921, and October 31, 1925, with respect to the manufacture and sale by it of speedometer gears, drive chains or flexible shafts, and flexible housings for such chains or shafts. (R. 3, 7, 10.)

In deciding against the petitioner the Court of Claims found the following facts (R. 11–12):

During the period in question, petitioner was engaged in the manufacture and sale of parts for automobile speedometers, particularly speedometer gears, drive chains or flexible shafts, and flexible housings for such shafts. The petitioner did not manufacture or sell complete speedometers. Said articles were especially designed, manufactured, and sold for use on or in connection with automobiles, and were not adapted to any other purpose or use. The excise taxes in question were paid with respect to said articles.

Flexible drive chains or shafts and housings are used on other machines than automobiles but those taxed to petitioner were especially manufactured and designed for use on speedometers which are used on automobiles.

ARGUMENT

The Court of Claims found that the articles taxed were "especially designed, manufactured, and sold for use on or in connection with automobiles and are not adapted to any other purpose or use." (R. 11.)

Petitioner contends, however, that while complete speedometers are taxable under the statutes, parts for such speedomoters are not "parts" or "accessories" for automobiles and are, therefore, not taxable. The answer to such a contention is

well expressed in the following language of Mr. Justice McKenna in *Worth Bros. Co.* v. *Lederer*, 251 U. S. 507, 509, 510:

> A shell is a definite article, constituted of materials of a certain kind and quality, assembled and fitted and finished so as to be adequate for its destructive purposes. Is not every element (we use the word for want of a better) in the aggregation or composition or amalgamation (whichever it is), of a shell, a part of it? If not, what is it? And what is the test to distinguish a part from not a part? We use the negative as an antithetic word does not occur to us to express that something necessary to constitute a thing is not a part of it. Petitioner surmounts the difficulty by contending that the law by its words "any part" of any of the "shells," implies a substantially finished part, as related to the whole structure and to the purpose it is intended to subserve. * * *
>
> We reject the contention. Congress did not intend to subject its legislation to such artificialities and make it depend upon distinctions so refined as to make a part of a shell not the taxable "part" of the law.

CONCLUSION

No question of general importance is presented by this case. The tax on automobiles parts and accessories was repealed in 1926. The judgment of

the court below was correct, and the petition for certiorari should be denied.

Respectfully submitted.

CHARLES E. HUGHES, JR.,
Solicitor General.
HERMAN J. GALLOWAY,
Assistant Attorney General.
CLAUDE R. BRANCH,
Special Assistant to the Attorney General.
RALPH C. WILLIAMSON,
W. MARVIN SMITH,
Attorneys.

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